Nos. 337, 338 & 339
Answer of Appellees to motion to
Filed Oct. 16, 1899.

Supreme Court U. S.
FILED
OCT 16 1899
JAMES H. MCKENNEY
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

THE UNITED STATES, *appellant*,
v.
THE CHOCTAW NATION AND THE CHICKASAW NATION. } No. 337.

THE WICHITA AND AFFILIATED BANDS OF INDIANS, *appellants*,
v.
THE CHOCTAW NATION AND THE CHICKASAW NATION AND THE UNITED STATES. } No. 338.

THE CHOCTAW NATION AND THE CHICKASAW NATION, *appellants*,
v.
THE UNITED STATES AND THE WICHITA AND AFFILIATED BANDS OF INDIANS. } No. 339.

Answer of Chickasaw Nation to Motion of Solicitor General to Return the Record to the Court of Claims.

The only relief sought by the Solicitor General is the reproduction, in their entirety, of five maps, designated on page 3 of his motion. And, in order to accomplish that result, he asks that the case may be temporarily re-

turned to the Court of Claims, to enable that court to make its action, on a certain motion of the counsel for the United States, "a matter of record," which he asserts that the Court of Claims has not yet done.

In reply, we submit, (1) that the court of claims has made its action on said motion "a matter of record" and could only dispose of it again on a rehearing after a vacation of its order, the time for which would seem to have passed; (2) that the Supreme Court and that court alone is competent to order that reproductions of these entire maps shall be included in the printed record; and (3) that the counsel for the Choctaws and Chickasaws have not and never had the slightest objection to an order by the Supreme Court requiring the printed record to contain full reproductions, by photo-lithography, by hand, or otherwise, not only of the five maps of which the Solicitor General desires full reproductions, but also of any or all of the other sixty-one maps, which this court may require to be reproduced in their entirety. But it is due to the court to say that, on many of these ancient maps, the boundaries are delineated in yellow, red and blue colors, with small and faint dots between, and it may be difficult, if not impracticable, to reproduce them by the photo-lithographic process. Moreover, to be useful the reproductions must be made nearly on the scale of the originals. The cost of such work will of course be very great.

The Solicitor General, on page 2 of his motion says:

> All tracings of maps are objected to as inadmissible. If the evidence of maps is required, the originals themselves should be produced, or properly verified photographs, or certified copies in case the originals are government records.

In the brief appended to his motion, it is alleged that a

part of a map, or book, cannot be made evidence; that the context of a map may be as important as the context of a book. He appears to be of the opinion that copies of maps, or books, proven to be correct by depositions, taken subject to cross-examination, are inadmissible; that President Jefferson's short message, relating to the Southwestern Indians, cannot be introduced, in evidence, from the Fourth volume of the American State Papers, Indian Affairs, without making evidence of all the multitudinous messages and other official documents contained in that large book; that the Supreme Court must study the map of the western hemisphere, in its entirety, in order to comprehend the little Wichita Reservation.

The main question, in these cases, is whether, by the treaty of 1866, the Choctaws invested the United States with the absolute beneficial ownership of the "leased district," or ceded the land in trust for the settlement of other Indians thereon. Among the numerous subordinate questions, involved in the determination of this main question, are these: (1) whether the United States, in 1803, owned the land west of the 100th meridian, ceded to the Choctaws in 1820, and (2) whether the Wichitas ever held a title by occupancy to the Wichita Reservation. For the purpose of corroborating our other proofs, on these and other questions, we found it convenient to present the evidence furnished by sixty-six maps, published in London, Paris, Amsterdam and the United States, in different years, commencing in 1701. We encountered, at the outset, a difficulty which will be understood upon an inspection of the originals of the five maps, which the Solicitor General thinks should be reproduced, in their entirety, for the *printed* record. The first of t ese is Map No. 5, vol. 1, De l'Isle's Atlas Nouveau. We produced an accurate tracing from that map, of the boundaries

of the old province of Louisiana, for the sole purpose of showing that the western boundary of that province was west of the 100th meridian, in 1803. The original map itself embraces the entire western hemisphere, including North, South and Central America, Greenland, the Azores, parts of Australia and New Zealand, and multitudes of islands in the Pacific and Atlantic oceans. The other four maps are almost as comprehensive as the first. We could see no logical connection between New Zealand, or Greenland, or South America, and this case, and therefore concluded to avoid the great expense of producing in evidence the entire maps, and offered in evidence tracings therefrom, of the province of Louisiana, proven by depositions, taken under cross-examination, to be accurate. The original maps could not be produced in court, as will appear from the papers now on file in the Court of Claims. The following motion was allowed by the Court of Claims on the 28th of December, 1897 :

The claimants ask the court to request the director of the library of congress to deliver to the clerk of this court, on or before January 17, 1898, the books and maps described in the annexed schedule, the same to remain in the custody of said clerk, for the inspection of the court, during the trial of this cause.

J. M. WILSON,
GEO. T. BARNES,
Counsel for Choctaws.
H. E. PAINE,
Counsel for Chickasaws.

The schedule included twelve (12) books and nine (9) maps. The Director of the Library responded as follows :

LIBRARY OF CONGRESS,
WASHINGTON, *January* 10, 1898.

DEAR SIR: I have the honor to acknowledge the receipt of a request, under the seal of the court of claims, that I furnish said court certain books and maps, now in the library of congress, for use as evidence in a case pending in said court at this time, viz: "The Choctaw Nation and the Chickasaw Nation, Complainants, *v.* The United States and the Wichita and Affiliated Bands of Indians, Defendants, Case No. 18,932."

In reply to this request, I beg to call the court's attention to the requirements of law, (Sections 92–94, R. S.) by which no maps are permitted to be taken from this library by any person, and the privilege of taking books is confined to certain designated persons, or classes of persons.

In view of this law, I apprehend it would be improper for me to attempt to comply literally with the Court's request, even if other considerations of library management were left out of account. If, however, it shall prove agreeable to the Court, in this matter, it will be possible to arrange that one of our attendants in the library should, each day, take the books,—not the maps,—asked for by the Court, to the Court room while the cause is being heard, and return with them each day to the Library. The books would thus be constructively, at least, at all time in the custody of the Librarian. I trust this may, in a measure at least, meet the wishes of the Court, for it is unnecessary to assure you that I am anxious to oblige Your Honor in any manner in my power.

Very respectfully,
JOHN RUSSELL YOUNG,
Librarian of Congress.

HON. CHARLES C. NOTT,
Chief Justice,
Court of Claims,
Washington, D. C.

On the 14th of February, 1898, a motion was filed, in the following words:

And now come the defendant Indians, by their attorneys J. M. Vale and A. A. Lipscomb, and move the court that the tracings of maps, filed in evidence by the claimants, may be temporarily withdrawn, by Mr. Philip Walker, counsel for the said Indians, for the purpose of comparing them with the originals, in the library of congress and elsewhere.

J. M. VALE,
A. A. LIPSCOMB,
Attorneys for Defendant Indians,
by PHILIP WALKER,
Of Counsel.

The foregoing motion bears the following indorsements:

Allowed. C. C. N.

Withdrawn under inclosed order Evidence in Rebuttal No. 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 42, 45, 50, 52, 53, 55, 56, 59, 62, 63, 65, and 138. Also 38, 41, 43, 44, 46, 47, 48, 49, 51, 57, 58, 60, and 61. Also Evidence in Chief 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 45, 46, 47, 48, 49, 53.

PHILIP WALKER,
Of Counsel.

FEB'Y 14, 1898.

Subsequently, in open Court, and in the presence of Mr. Binney and Counsel for the Choctaws and Chickasaws, and for the Wichita and Affilliated Bands, Mr. Walker returned said tracings to the files. He submitted to the Court no written report of the result of his comparison of the tracings with the original maps; but he stated orally that he had found only two (2) or three (3) inaccuracies in the tracings; and these were apparently immaterial, for he neither explained their nature, nor indicated the tracings in which they occurred. By their silence, the

counsel for all the parties seemed to acquiesce in this result.

The Choctaws and Chickasaws presented in this cause, two hundred and thirty items of documentary proof. On the 27th of April, 1899, after judgment had been rendered by the Court of Claims, the attorney for the United States moved to exclude from the record all of those proofs, except thirty-three.

This motion of the attorney for the United States contained this statement:

The reasons for this motion are as follows:

First. All the papers above mentioned were filed subject to a reserved right of objection on the part of the United States, and objections were made, in writing, July 7, 1897, which objections have never been overruled by this court.

The motion filed July 7, 1897, was in the following words:

Now comes the attorney.general in behalf of the United States and objects to exhibits Nos. 1 to 54, filed by the claimants on April 21, 1896, and to exhibits in rebuttal Nos. 1 to 163, filed by the claimants July 30, 1896, as follows:

First. All tracings of Maps are objected to as inadmissible. If the evidence of maps is required, the originals themselves should be produced, or properly verified photographs, or certified copies, in case the originals are government records.

Second. All extracts from public documents are objected to as inadmissible. If the evidence of such documents is required, they should be produced entire.

Third. All uncertified copies of records and papers in the Indian office, or other offices of the government, are objected to for lack of the statutory certificate.

Fourth. All extracts from historical or other like books

are objected to. Such books may be cited in argument, but, if they are to be treated as evidence, the entire volume should be produced.

These objections are made, under the right of objection reserved at the time of the taking of the deposition of Halbert E. Paine, on April 25, 1896, and under the general objection, made at the time of the taking of the deposition of Halbert E. Paine, July 23, 1896.

J. E. DODGE,
Assistant Attorney General.

CHARLES C. BINNEY,
Assistant Attorney in charge of case.

The court's order of May 17, 1899, disposed of the said objections filed by the attorney for the United States, July 7, 1897, (1) by excluding from the record proofs of which the court could take judicial notice; (2) by including in the record the following tracings taken April 25, 1896, and also the originals of those tracings, viz: Nos. 21 to 39 inclusive, Nos. 45 to 49 inclusive, and No. 53; (3) by including in the record extracts and translations filed July 30, 1896, as follows: Nos. 4, 6 to 12 inclusive, 15, 16, 64, 68, 69, 152, 153, 154 and 163; (4) by including in the record tracings taken July 23, 1896, as follows: Nos. 24 to 63 inclusive, and No. 138; (5) by including in the record tracing No. 65, filed July 30, 1896, and also the original of that tracing; (6) by including in the record extracts Nos. 66 and 67, filed July 30, 1896, and also the originals thereof. Inasmuch as none of the original maps had been filed as evidence in court, or had even been inspected by the court, the order would seem to have made them, not actually, but only constructively a part of the record.

HALBERT E. PAINE,
Counsel for the Chickasaw Nation.

DISTRICT OF COLUMBIA, *ss:*

Halbert E. Paine having been duly sworn says that the statements made in the foregoing answer are true.

Subscribed and sworn to before me this 13th day of October, 1899.

[SEAL.] S. OLIVIA MOORE,
Notary Public, D. C.